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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/700,006

11/03/2003

Donald W. Verser

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EXAMINER

Michael G. Fletcher

Fletcher Yoder

P. O. box 692289

Houston, TX 77269-2289

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/700,006	Applicant(s) VERSER ET AL.	
	Examiner Jennifer A. Leung	Art Unit 1764	

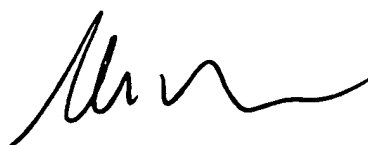
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 25 August 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.


 Jennifer A. Leung
 Examiner
 Art Unit 1764

Art Unit: 1764

Continuation of 10. Other (including any explanation in support of the above items):

- Item 2: The status of claims 4, 18, 19, 23, 26, 37, 38 and 42 is not identified.
- Item 4: Reference to the specification should be made by page and line numbers (and not paragraph numbers). The page and line numbers should also be applied to the citations made within the Arguments section of the brief.
- Item 6: The brief identifies nine (9) grounds of rejection, but appellants have not provided an argument under a separate heading for each of the nine grounds of rejection. As stated in MPEP 1205.02 (vii),

Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. The failure of appellant to separately argue claims which appellant has grouped together constitutes a waiver of any argument that the Board must consider the patentability of any grouped claim separately. See *In re McDaniel*, 293 F.3d 1379, 1384, 63 USPQ2d 1462, 1465-66 (Fed. Cir. 2002). Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number.

For example, if Claims 1 to 5 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. Y and appellant is only going to argue the limitations of independent claim 1, and thereby group dependent claims 2 to 5 to stand or fall with independent claim 1, then one possible heading as required by this subsection could be "Rejection under 35 U.S.C. 102(b) over U.S. Patent No. Y" and the optional subheading would be "Claims 1 to 5." Another example is where claims 1 to 3 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. Z and appellant wishes to argue separately the patentability of each claim, a possible heading as required by this subsection could be "Rejection under 35 U.S.C. 102 (b) over U.S. Patent No. Z," and the optional subheadings would be "Claim 1," "Claim 2 " and "Claim 3." Under each subheading the appellant would present the argument for patentability of that claim. The best practice is to use a subheading for each claim for which separate consideration by the Board is desired.



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